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FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

November 8, 1993

Via Hand Delivery

William F. Caton, Acting Secretary Federal Communications Commission Washington, D.C. 20554

Re:

Celpage, Inc., et al. Comments PR Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith, on behalf of Celpage, Inc., Network USA, Denton Enterprises, Copeland Communications & Electronics, Inc. and Nationwide Paging, please find enclosed the original and four (4) copies of its Comments in the above-referenced Rulemaking proceedings.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Jill M. Lyon

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Enclosure

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Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	OF THE SECRETARY
Implementation of Sections 3(n) and 332)	
of the Communications Act)	GN Docket No. 93-252
Regulatory Treatment of Mobile Services))	

JOINT COMMENTS OF CELPAGE, INC., NETWORK USA, DENTON ENTERPRISES, COPELAND COMMUNICATIONS & ELECTRONICS, INC. AND NATIONWIDE PAGING

Celpage, Inc., Network USA, Denton Enterprises, Copeland
Communications & Electronics, Inc. and Nationwide Paging
(collectively, the "Joint Commenters"), through undersigned
counsel and pursuant to Section 1.415 of the Commission's Rules,
47 C.F.R. § 1.415, respectfully submit their Comments in response
to the Notice of Proposed Rule Making ("NPRM") adopted by the
Commission in the above-referenced proceeding.¹ The Joint
Commenters support some of the rule modifications recommended in
the NPRM, and wish to comment specifically on the rights of
mobile service providers to equal interconnection to the Public
Switched Telephone Network ("PSTN"), for the following reasons:

I. Statement of Interest.

The Joint Commenters are large and small mobile service providers operating across the country pursuant to FCC authorization. Collectively, they hold hundreds of licenses in the public and private land mobile radio services, in services including radio common carrier ("RCC") and private carrier ("PCP") paging, Specialized Mobile Radio ("SMR") and Business

Notice of Proposed Rule Making, GN Docket No. 93-252, adopted September 23, 1993 (FCC 93-454).

Radio. Some of the Joint Commenters have been interested parties in various FCC rulemaking proceedings pertaining to PCP and RCC paging issues.

The rule changes proposed in the NPRM would have an immediate impact on the Joint Commenters' businesses. Moreover, due to their experience in several areas of FCC-licensed mobile services, the Joint Commenters are well-qualified to comment on the proposed rule changes. Thus, they have standing as interested parties to file formal comments in this proceeding.

II. <u>Summary of Notice</u>.

In the NPRM, the Commission seeks to implement a Congressional mandate to create a comprehensive regulatory framework for all mobile radio services. NPRM at ¶ 1.

Specifically, all mobile service providers, whether currently regulated as common carriers or private land mobile licensees, will be re-categorized as "commercial mobile service" or "private mobile service" providers; future services such as Personal Communications Services ("PCS") will also be included in the new framework. Id. at ¶ 3. In the NPRM, the FCC seeks comment on the definitions of these and other terms included in the federal legislation, the proposed regulatory treatment of the new service categories and the proposed application of various provisions of Title II of the Communications Act. Id. at ¶ 5.

Congress has defined "commercial mobile service" as that which is provided for profit and makes "interconnected service" (i.e., service "interconnected" to the "public switched network")

available to the public or "to such classes of eligible users as to be effectively available to a substantial portion of the public." Id. at ¶ 10. The Commission seeks comment on the definitions of these terms, including "interconnected" and "public switched network". Id. Commercial mobile service providers are to be regulated as common carriers (Id. at ¶ 53); however, the Commission has tentatively concluded that it may establish classes or categories of commercial service with varying regulations. Id. at ¶ 54.

Private mobile service is defined as any mobile service that is not a commercial mobile service or the functional equivalent of a commercial mobile service. Id. at ¶ 28. The Commission has therefore tentatively concluded that it may classify a service as private, even if it meets the definition of a commercial mobile service, if it is not "functionally equivalent" to commercial mobile services. Id. at ¶ 29. For example, the Commission could classify as private an interconnected service offered to the public "if it does not employ frequency reuse (or similar means of augmenting channel capacity) and does not provide service throughout a standard metropolitan statistical area or 'similar wide geographic area.'" Id. at 28. Therefore, some interconnected mobile services may be eligible for classification as private under the proposed reorganization.

The new Section 332(c)(1)(B) of the Act requires that common carriers provide interconnection with commercial mobile service providers upon reasonable request. Id. at ¶ 69. The new section

also specifically states that the Commission's authority to order interconnection has not been either limited or expanded. <u>Id.</u>

The FCC therefore tentatively concludes that it continues to have authority to require common carriers to provide interconnection to private service providers pursuant to its regulatory jurisdiction over interstate common carrier service. <u>Id.</u> at ¶ 72.

III. Commercial and Private Mobile Service Providers Should Have Equal Interconnection Rights.

The Joint Commenters strongly support the Commission's conclusions that it continues to have authority to require common carriers to provide interconnection to both the proposed commercial mobile service providers (see NPRM at ¶ 71) and private mobile service providers (see NPRM at ¶ 72). In fact, it is somewhat odd that the Commission would request comment on this issue, and on whether interconnection rights should differ depending on whether the services are "commercial" or "private". In the Joint Commenters' opinion, the answers are clearly governed by the Communications Act and its precedents: local telephone carriers are obligated to provide interconnect services to any interested customers upon reasonable demand under fair and non-discriminatory terms. See 47 U.S.C. §§ 201(a),(b), 202.

While RCCs and private interconnected services such as PCP have heretofore been regulated under different Commission rules, both types of licensee require the identical form of telephone services to provide their customers an interconnected paging or two-way mobile service. Unfortunately, for far too many private

service licensees, local telephone companies fail to recognize that PCPs and SMRSs, as telephone customers, are legally entitled to equal treatment with RCCs.

The FCC, through a series of "Policy Statements" and "Declaratory Rulings", has regularly exercised its jurisdiction over interconnection matters to ensure that interconnection to the PSTN will be provided by the wireline telephone companies ("WTCs") on fair and reasonable terms. See, e.g., Cellular Interconnection (Declaratory Ruling), 2 FCC Rcd. 2910 (1987); see also, Radio Common Carrier Services (Post-Divestiture BOC Practices), 59 RR 2d 1275 (1986). Commercial and Private Mobile Services, regardless of how they are ultimately regulated by this Commission, should be no exceptions to the rule: they are equally entitled to interconnection under the same terms and conditions.²

There is no language in the Communications Act that allows telephone companies to treat private carriers differently from common carriers. Many of the Joint Commenters have had to fight long and expensive legal battles with local telephone companies to obtain interconnect services on terms that RCCs have enjoyed

The Commission also seeks comment on the interconnection rights of PCS providers; the Joint Commenters strongly agree with the Commission's proposal that, whether licensed as commercial or private mobile service providers, PCS licensees will have a similar right to non-discriminatory interconnection. See NPRM at ¶ 73.

for more than a decade.³ The FCC should seize this opportunity to clearly state that this blatant form of discrimination is unlawful and will not be tolerated.

At least one member of this Commission has articulated that this rulemaking proceeding presents a perfect opportunity to end interconnect discrimination. Commissioner Duggan, in his separate statement accompanying the NPRM, noted that the FCC will have a role in making redefined commercial mobile services successful. Of the five points mentioned in his Statement, his first was pertinent to these Joint Comments: "We can require nondiscriminatory interconnection among all providers, whether wireless or wireline." See Separate Statement of Commissioner Ervin S. Duggan in Re: Implementation of Title VI of the Omnibus Budget Reconciliation Act of 1993, Regulatory Treatment of Mobile Services, released September 24, 1993. Commissioner Duggan further recognized that the FCC can exercise its regulatory authority under Title II of the Communications Act to "make interconnection easier to accomplish." Id.

Simply by including a discrete interconnect provision in the new Rules governing commercial and private mobile service providers, the FCC could eliminate the endless and expensive interconnect discrimination proceedings that have been brought and are still pending before state and local utility commissions,

³ If the FCC were to issue a notice soliciting comments on this single issue of interconnect discrimination, it would receive dozens, if not hundreds, of anecdotes nationwide concerning the scope of interconnect discrimination.

as well as the FCC and the courts. Until now, obtaining equal interconnection rates has been accomplished only on a piecemeal basis, and often with mixed results. An equal interconnect rule would also help state authorities, some of which are not familiar with services other than RCCs, to understand that all mobile service providers requiring interconnection are entitled to equal rates and services under the Communications Act.

IV. Conclusion

FOR ALL THE FOREGOING REASONS, the Joint Commenters support the Commission's proposals regarding interconnection rights of proposed commercial and private mobile service providers, and urge the Commission to adopt a rule guaranteeing reasonable and non-discriminatory interconnect rates to <u>all</u> mobile service providers.

Respectfully submitted,

CELPAGE, INC. NETWORK USA

DENTON ENTERPRISES

COPELAND COMMUNICATIONS

& ELECTRONICS, INC. NATIONWIDE PAGING

By:

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Date: November 8, 1993

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 8th day of November, 1993, copies of the foregoing Comments of Celpage, Inc, Network USA, Denton Enterprises, Copeland Communications & Electronics, Inc. and Nationwide Paging were mailed, postage prepaid, to the following:

Acting Chairman James H. Quello* Federal Communications Comm. Washington, DC 20554

Commissioner Andrew C. Barrett* Federal Communications Comm. Washington, DC 20554

Commissioner Ervin S. Duggan* Federal Communications Comm. Washington, DC 20554

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Glenda Sumpter

* Hand Delivery